

From: Law Office of Steven K. Hayes <shayes@stevhayeslaw.com>
Sent: Friday, May 24, 2024 4:36 PM
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Subject: Second Court Newsletter: CJS CCA Update Webinar, New Opinions

May 24, 2024

Dear Friends:

Here is a great reason for those of you who do criminal law to join the State Bar Criminal Justice Section (dues \$30; you can join through your My Bar Page at the Texas Bar's website): My friend Stacey Soule, State Prosecuting Attorney, has asked me to alert everyone that **on Wednesday, May 29, 2024, during the noon hour**, the CJS will have a **webinar** broadcast of the April 11 recording of **Court of Criminal Appeals' Judges Bert Richardson and Jesse McClure** as they present an Update Concerning the Court of Criminal Appeals. The webinar carries with it 1 hour of MCLE credit. You have to join the CJS to get notification of and access to the webinar, and I'm not sure about the deadline for that. So, if you have an interest--Join the CJS **now**. :-)

Opinions in a couple of civil cases came out of the Second Court this week, dealing with the following:

Recent opinions issued by the Court in civil cases cover the following issues

- Parental Right Termination (Due Process, Preservation)
- Parent Child Relationship (History of Family Violence, Joint Managing Conservatorship)

Recent opinions issued by the Court in civil cases cover the following issues (footnotes omitted in all summaries unless otherwise stated. All names in suits involving minors are aliases unless otherwise noted):

- ***Parental Right Termination (Due Process, Preservation):*** *N.Y.*, No. 02-24-00065-CV--“After a bench trial, the trial court terminated Appellant Mother’s parental rights to her infant daughter N.Y.1 In a single issue, Mother complains that her due process rights were violated because she was unable to understand the service plan presented by the Department of Family and Protective Services (the Department) ‘due to undisputed mental incapacity.’ Because Mother failed to preserve her only appellate complaint, we affirm....Although much of the termination trial focused on Mother’s mental health issues and there was some testimony that she did not understand her service plan, she did not argue to the trial court that her due process rights or Section 263.102 had been violated. Complaints about due process violations must be raised and ruled on in the trial court in order to be preserved for appeal....Therefore, because Mother did not raise her due process claim in the trial court, she has failed to preserve it for our review.”
- ***Parent Child Relationship (History of Family Violence, Joint Managing Conservatorship):*** *L.E. and P.E.*, No. 02-24-00036-CV--“L.V. (Mother) appeals from the trial court’s final order appointing C.E. (Father) as the sole managing conservator of their two children, L.E. (Lisa) and P.E. (Penny), and appointing Mother as the children’s possessory conservator.... In this ultra-accelerated appeal,2

Mother argues in two points that the trial court abused its discretion by (1) appointing Father as the children’s sole managing conservator because he has a history of domestic violence against Mother and (2) failing to appoint her as a joint managing conservator because the evidence was insufficient to overcome the presumption that naming both parents as such was in the children’s best interest. Because the trial court did not abuse its discretion, we will affirm.

- History of Family Violence (Appointing Father Sole Managing Conservator): “Here, Father assaulted Mother in November 2022. He admitted to the assault at trial and testified that he had pleaded guilty and was on probation for the offense until June 2025. Even so, the trial court was within its broad discretion to conclude that there was no credible evidence of a history or pattern of Father’s physically abusing Mother because no evidence showed that Father had assaulted Mother before or after the November 2022 assault and because Father described the assault as a ‘one-off.’.... Although the assault was undisputed, the trial court was not required to find that a history of abuse or family violence exists....[Furthermore] such a finding would not have prohibited the trial court from appointing Father as the girls’ sole managing conservator” under the facts of this case, including “Father successfully completed his service plan, which included domestic-violence classes, parenting classes, and individual counseling” and “Mother, however, failed to demonstrate safety and stability.”
- Joint Managing Conservator: “Here, several factors weigh in favor of appointing both parents as joint managing conservators: both parents love and are bonded with the children, they have both completed parenting classes, Mother and Father each appear to be able to ‘encourage and accept a positive relationship’ between the girls and the other parent, and the parents’ homes are in relatively close geographic proximity. But Mother’s continued drug use, recent arrests, and lack of housing stability weigh against appointing her as joint managing conservator.”

All for now. Y'all stay safe and well. I hope to see you today and next Thursday, and in any event, have a great weekend!

Yours,

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